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Supreme Court of the United States

No. 451.

OCTOBER TERM, 1940. .

**LUCILLE HARVEY, A WIDOW, PETITIONER,
VS.**

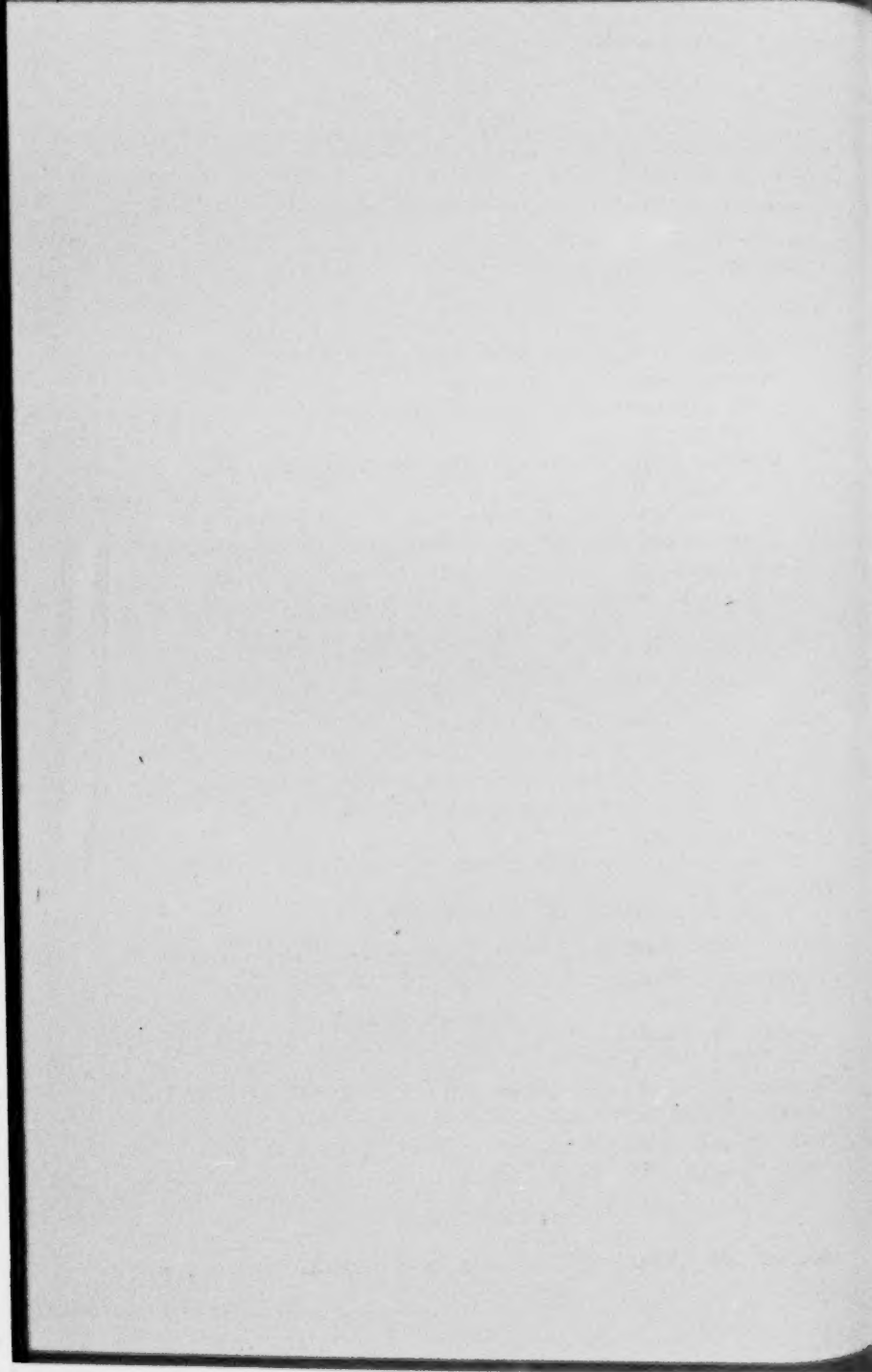
**CITY OF ST. PETERSBURG, A MUNICIPAL CORPORATION,
FOR THE USE OF GLENN V. LELAND, AS
RECEIVER OF THE CERTIFICATE SINKING FUND OF
THE CITY OF ST. PETERSBURG, FLORIDA,
RESPONDENT.**

**ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA.**

BRIEF OF RESPONDENT.

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OPINION OF THE COURT BELOW.

The decree of the Supreme Court of Florida, which the petition for certiorari asks this court to review, is reported in 197 Southern Reporter, page 116, and by reference adopts as the law of the case a former opinion of the Supreme Court of Florida rendered in this cause and reported in 189 Southern Reporter, page 861.

OBJECTION TO GROUND OF JURISDICTION INVOKED.

The petition for certiorari does not properly present any Federal question for determination by this court.

STATEMENT OF FACTS CORRECTING INACCURACY IN THE STATEMENT OF FACTS BY PETITIONER.

Petitioner has unwittingly presented a statement of facts not in accordance with the record. She says (page 4 of petition):

"The terms of this contract were complied with and the bonds were delivered to the private holders and the City took up its public improvement lien certificates and became again the owner thereof. These certificates were deposited with Glenn V. Leland, the director of finance of the City, for collection."

The City did not become the owner of the improvement lien certificates under the contract between the City and the private investors who originally purchased the same (Record 54).

The City proposed to the holders of improvement lien certificates to issue refunding general obligation bonds in renewal of the principal of the improvement liens; to place all of the improvement liens, the principal of which was redeemed, in a special sinking fund solely for the purpose of retiring the delinquent interest due upon said certificates on the date of the issuance of refunding bonds and thereafter for the retirement of the refunding bonds. It was provided that said sinking fund should be kept separate and apart from all other funds of the City, and the collections from said certificates so placed in said sinking fund should be used for the payment of the delinquent interest (Record 57-58). The Director of Fi-

nance of the City, and his successors in office, was designated and constituted as trustee for the purpose of carrying out the provisions of the sinking fund thus established (Record 59). It was the duty of the trustee to enforce collections sufficient to pay all of the delinquent interest within six months, failing which it then became his duty to institute suits at law or in equity to collect the same and upon his failure so to do the contract gave the holders of refunding bonds the right to enforce the collection of said improvement liens in the name of the City until the delinquent interest was fully paid (Record 60). This contract gave the holders of refunding bonds no additional right than that which they possessed under the provisions of Section 108, Chapter 6772, Laws, 1913 (Record 76).

It will thus be seen that the City did not become the owner of the improvement liens but on the contrary the trustee became the owner and the holders of refunding bonds had the first lien on the fund thus created.

When the trustee failed to perform his duty the parties beneficially interested filed a bill in equity and had the Circuit Court of Pinellas County, Florida, to appoint a receiver to represent all of the parties (Record 47).

ARGUMENT.

No Federal Question Presented for Consideration.

Petitioner contends that:

The appointment of a state court receiver for the express purpose of foreclosing municipal improvement liens, and the subsequent foreclosure thereof by the receiver against the real estate of petitioner, deprives her of her property without due process of law.

No other question is presented in the petition or brief of petitioner, as a ground for jurisdiction of this Court.

Receiver May Be Appointed by Court to Collect Improvement Liens When Authorized by Legislature.

Petitioner relies, as authority, upon the case of *State ex rel. Lynch v. District Court*, 73 Pac. 2d 333, 113 A. L. R. 746, for the proposition that a court is without jurisdiction to appoint a receiver to collect paving assessments. That court did so hold when such remedy is not one of those provided by statute, but the court, in the opinion, cited the case of *Preston v. Sturgis Mill Company*, 183 Fed. 32, 32 L. R. A. 1020, as authority. In the case last cited the court said:

“The scope of the principle is that each step in the process of taxation from beginning to end can be taken only as the legislature may prescribe * * *. It is not, however, within the scope of this principle that the judiciary shall in no event exercise this power of taxation. Its scope is that it shall not exercise it *unless the legislature shall so provide. If the legislature does so provide, it may exercise to the extent provided*” (Italics supplied).

**Florida Supreme Court Construed Section 108, Chapter
6772, Laws of Florida, 1913, As Authorizing Court to
Appoint Receiver for Collecting Municipal
Improvement Liens.**

The Supreme Court of Florida, in the opinion filed on June 16, 1939 (Record 72), construed Section 108, Chapter 6772, Laws of Florida, 1913 (Appendix A) as empowering the courts to appoint receivers for the purpose of collecting municipal improvement liens in a proper case. The Court said (Record 74):

"It is true, as contended by appellant, that in the absence of legislative authority so to do, a court receiver has no authority whatsoever to enforce the collection of taxes or public improvement assessment liens issued by a municipality * * *.

"However, Section 108, Chapter 6772, Special Acts of 1913, Laws of Florida (Charter of City of St. Petersburg) provides:

'In all cases mentioned in this act where the City of St. Petersburg has acquired or may hereafter acquire, liens for improvements, such liens or any of them may be enforced in the following manner by said City or *in the name of said City by the holders*; first by a bill in equity; second, by a suit at law' (Italics supplied).

"The City guaranteed the payment of the certificates involved herein, but did not pay the same upon default. Instead, the City proposed to issue refunding bonds, on a renewal obligation in payment of the principal of the certificates of indebtedness, and to create a trust fund by placing all of the certificates of indebtedness in a common fund which was to be administered by a trustee, and to pay the accrued interest due the holders of said certificates of indebtedness out of the fund thus created. In order to facilitate the operation of the plan, the City issued to the holders of said certificates of indebtedness non-interest bearing delinquent interest certificates evidencing the amount of delinquent interest which each holder of the certificates of indebted-

ness was entitled to receive. The holders of said certificates could not look to the general revenues of the City for the payment of their obligations. There was but one source of payment and that was the trust fund created by the collection of these certificates of indebtedness.

"The law is well settled that courts of equity have jurisdiction to appoint a receiver of trust estates or trust funds" (Record 74-75).

Construction by Highest Court of State of a State Statute Binding on United States Supreme Court.

The validity of state statutes is a question, the decision of which by the highest state court is not open to review in the Federal Supreme Court on writ of error to the state court.

Green v. Frazier, 253 U. S. 233, 64 U. S. (L. Ed.) 878 (1).

The Federal Supreme Court, when testing the validity of a state statute, may not give to the statute a significance which the highest court of the state has expressly decided that it does not have.

Orr v. Allen, 248 U. S. 35, 63 U. S. (L. Ed.) 109 (1).

The construction by the highest court of a state of a state statute so as to hold that it authorizes the appointment of special collectors, each charged with the duty of collecting only some designated part of assessed county taxes, will be followed by the United States Supreme Court.

Hendrickson v. Apperson, 245 U. S. 105, 62 U. S. (L. Ed.) 178 (1).

The construction by the Supreme Court of Florida that Section 108, Chapter 6772, Laws of Florida, 1913, authorizes a court to appoint a receiver to collect special assessment liens is binding on this court, under the decisions cited above and other decisions of this court too numerous to set out in this brief.

Due Process of Law.

Petitioner does not contend that she did not receive notice of the claim asserted nor that she did not have an opportunity afforded her to defend against it. The record is conclusive that she had her day in court. If the lien is a valid lien, petitioner has the right to redeem the same at any time before the sale of her property under foreclosure, whether the foreclosure be by a receiver appointed by the court or by the city in its corporate capacity. If the lien is invalid she can contest the invalidity in the action brought by the receiver, which she did and the adjudication was adverse to her. Her rights were not diminished by the appointment of a receiver with power to foreclose the lien.

The proceedings in a state court, in order to constitute due process of law under United States Constitution, 14th Amendment, need not be by any particular mode, if they constitute a regular course of proceeding in which notice is given of the claim asserted, and an opportunity afforded to defend against it.

Reagan v. United States, 182 U. S. 427, 45 U. S. (L. Ed.) 1165 (3).

Federal Question Essential.

It is essential to the jurisdiction of the Supreme Court of the United States in reviewing a decision of a state court that it must appear affirmatively from the record not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, that the federal question was actually decided, or that the judgment rendered could not have been given without deciding it.

Southwestern Bell Telephone Co. v. State of Oklahoma, 303 U. S. 206 (2), 82 U. S. (L. Ed.) 751 (2).

The respondent contends that the question involved in the petition for certiorari is purely one of procedural law hinging upon the construction of a state statute, which has been construed by the highest court of the State of Florida. In matters of procedural law there can be no denial of due process of law where the defendant has received notice, as a matter of right and not as a matter of grace, has had an opportunity afforded for a hearing and has been heard.

Respondent respectfully submits to the court that the petition for certiorari presents no federal question for the consideration of this court and the petition should therefore be denied.

Respectfully submitted,

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